

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

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AUG 30 2005

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte JES THYSSEN, HUAN-YU SU, ADIL BENYASSINE  
and EYAL SHLOMOT

Appeal No. 2003-0774  
Application 09/841,764

ON BRIEF

Before FLEMING, Chief Administrative Patent Judge, JERRY SMITH  
and SAADAT, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellants request that we reconsider that portion of our decision of July 23, 2004 wherein we affirmed the rejection of claims 21-35 as unpatentable under 35 U.S.C. § 103.

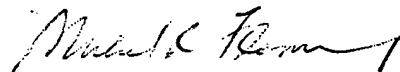
Claims 21-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Rapeli in view of Delargy. We noted that the examiner's rejection made no reference to Delargy in its analysis and seemed to rely on Rapeli taken alone, however, the examiner's response in the answer broadly asserted the obviousness of applying the teachings of Delargy to the teachings of Rapeli. Although we agreed with appellants that the examiner's findings with respect to Rapeli were incorrect and did not support the rejection, we also made a finding that the invention of representative claim 34 was taught by the teachings of Delargy taken alone. Thus, we affirmed the examiner's rejection based on the teachings of Delargy taken alone [Decision, pages 6-11].

Appellants argue that our original decision was based on a misapprehension of the teachings of Delargy. Specifically, appellants argue that since all the coding in Delargy is based on the G.723.1 standard, then the coding of silence in Delargy is not independent of the speech coding mode because both are based on the G.723.1 standard [Request for Rehearing, pages 3-4].

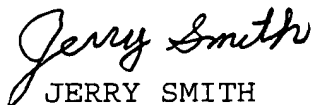
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We agree with appellants that we misapprehended the teachings of Delargy and that claims 21-35 are not rendered obvious by the teachings of Delargy taken alone for the reasons pointed out by appellants in the Request for Rehearing. Therefore, appellants' request is granted to the extent that our original decision is modified to reflect that the examiner's rejection of claims 21-35 under 35 U.S.C. § 103(a) based on Rapeli and Delargy is reversed. Accordingly, the original decision is modified to state that the decision of the examiner rejecting claims 21-44 and 46-53 is reversed.

REQUEST FOR REHEARING GRANTED



MICHAEL R. FLEMING  
Chief Administrative Patent Judge



JERRY SMITH  
Administrative Patent Judge



MAHSHID D. SAADAT  
Administrative Patent Judge

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JS/ki